IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.439 OF 2005

M/s Pramod Kumar Jain Securities Pvt.Ltd. ...Petitioners

v/s

Sandeep Mehta and others ...Respondents

Mr B. Somandy i/b Mr Vinod Tawade for Petitioners.

Ms M. Thakkar with Ms S.V. Thakkar i/b Mr R.V. Thakkar for Respondent No.1.

Mr Abuwala i/b M/s Dave and Co. for Respondent No.2.

CORAM : D.K. DESHMUKH J.

DATE : 4TH MAY 2006.

P.C. :-

1. By this petition filed under section 34 of the Arbitration and Conciliation Act 1996, the petitioners challenge the award made by the appellate Tribunal of the Bombay Stock Exchange. The first challenge to the award is that though the respondent No.2, who is admittedly registered sub-broker of the petitioners, had admitted the liability towards respondent No.1, the Appellate Arbitral Tribunal could not have made an award against the present petitioners because according to the petitioners, some of the transactions entered into between the respondent No.1 and the sub-broker were not on the floor of the Stock Exchange, Mumbai. According to the petitioners, even the contract between the respondent No.1 and the respondent No.2 permitted the parties to enter into transactions on the floor of the Stock Exchange, Mumbai. This aspect of the matter has not been considered by the Appellate Arbitral Tribunal and relying on the Circular issued by the SEBI, where it is laid down that once a registered broker appoints a sub-broker, he is liable for all the dealings of the sub-broker to the third party. I do not find any error in the reasoning adopted by the Appellate Arbitral Tribunal. The third party enters into transactions with the respondent No.2 because the registered broker has

chosen to appoint him as sub-brokers. Therefore, when because of any transaction between the sub-broker and third party any liability arises, the registered broker is jointly liable with the sub-broker. If the sub-broker has done any transaction which he was not authorised to do, then the remedy of the registered broker would be to proceed against the sub-broker, but the third party cannot be made to run after the sub-broker. In any case, in my opinion, the view that has been taken by the Appellate Arbitral Tribunal is a possible view and therefore, it cannot be disturbed in the limited jurisdiction of this Court under section 34 of the Act. The second ground on which the award is challenged is that according to the petitioners, the Appellate Arbitral Tribunal has not considered the ground raised by the petitioners that the claim was barred by the law of limitation. Now, perusal of the reply to the claim statement filed by the present petitioners shows that the ground that the entire claim made by the respondent No.1 was barred by the law of limitation was raised. The original Arbitral Tribunal did not make any award against the present petitioners. The award was restricted only against the sub-broker. The Appellate Arbitral Tribunal has not considered this aspect of limitation. In the petition, ground about limitation is raised not about entire claim but only about 91 shares of Reliance Industries Ltd. and 1000

shares of Bank of Rajasthan. In this background therefore, the petitioners want to challenge the award on the ground of non-consideration of the ground that the claim is barred by the law of limitation. The petitioners contend that the ground of limitation as raised in the petition was argued by the petitioners before the Appellate Arbitral Tribunal but the same was not considered by the Tribunal. Though an application under section 33 of the Act was filed before the Appellate Tribunal, there is no ground raised in that application that despite the petitioners arguing the ground of limitation before the Tribunal, it has not been considered by the Tribunal. If the ground was urged before the Tribunal, still the Tribunal did not consider the ground in the award, the petitioners should have said so specifically in the application. The conduct of the petitioners of not taking such a ground in the application filed under section 33 of the Act shows that no such ground was actually raised before the Appellate Tribunal. The Appellate Tribunal has specifically said in its order under section 33 of the Act that the only ground urged by the petitioners was that because the dealings were by the sub-broker, the petitioners cannot be held liable. In this view of the matter therefore, the ground cannot be permitted to be raised in this petition. One more ground was tried to be urged about valuation of the shares. I asked the

learned counsel to show me whether in the petition that ground has been raised. He pointed out to me ground No.(xix) in the petition. Perusal of ground No.(xix) shows that by that ground, a grievance is made about Appellate Arbitral Tribunal deciding the application for clarification without granting an opportunity of being heard. Thus, no ground about valuation of shares was pointed out. Obviously, that ground cannot be argued. In the result therefore, petition fails and is dismissed. The petitioners are directed to pay costs of this petition to the respondent No.1. The cost is quantified at Rs.25,000/-.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.